

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 16-1646

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:00 p.m., April 18, 2016, on the application of **GUY and MARY SPURRY** (“Applicants”). The Applicants are requesting two variances to permit them to demolish an existing legal non-conforming 505 square foot storage shed, located within 40.6 feet of a tributary stream at the closest point, and replace it with a 1,440 square foot storage foot. The variances would permit the following: (1) a vertical expansion of the replacement shed to a height of 17’ 6 5/8” from the 16’ height of the existing shed; and (2) construction of the proposed replacement shed within the 100-foot Tributary Stream Buffer to 40 feet from the tributary stream at its closest point. The property is located at 7549 Sawyer Lane, Easton, Maryland 21601 in the Rural Residential/Western Rural Conservation (RR/WRC) zone. The Applicants own the property. The request is made in accordance with Chapter 190 Zoning, Article II, §190-14, Table II-3, Article V, §190-123, Article VI, §190-139, and Article IX, §190-182 of the Talbot County Code (“Code”).

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Margaret Young, and Louis Dorsey. The Applicants were represented at the hearing by their agent Elizabeth Fink of Fink, Whitten, and Associates, 8626 Brooks Drive, Unit 103, 2nd Floor, Easton, Maryland 21601. Jeremy Rothwell, Planner I, Talbot County Planning and Zoning, attended the hearing. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for critical area variance with Attachment A.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.

4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of critical area variance requirements from the Code with the written responses of the Applicants to each applicable warrant.
7. Staff Report dated March 23, 2016 with attachments.
8. Sign maintenance agreement.
9. Revised Site Plan prepared by Fink, Whitten & Associates, LLC, received April 18, 2016.
10. Site Plan prepared by Fink, Whitten & Associates, LLC, received February 1, 2016.
11. Floor Plan and Elevation Plans.
12. Revised letter from Critical Area Commission dated April 18, 2016.
13. Letter from Critical Area Commission dated April 8, 2016.
14. Independent Procedure Disclosure and Acknowledgement Form.
15. Aerial photograph.
16. Photographs from the staff site visit on March 23, 2016.
17. Letter from Elisa Deflaux, Talbot County Environmental Planner, dated September 3, 2015.

Ms. Fink presented evidence in support of the application. She testified that Mr. Spurry wishes to enlarge an existing shed on his property. The staff of the Talbot County Office of Planning and Zoning advised him that any enlargement would require a variance because of the shed's proximity to a tributary stream. He retained Fink, Whitten & Associates to assist him in the variance process.

Fink, Whitten & Associates first did a full site survey of the Applicants' property locating all of the boundaries, stream banks, and structures. Mr. Spurry is a working waterman who works on and stores his boats and equipment on his property. His existing shed is in disrepair and because he needs a

larger shed he decided to seek approval to replace the shed. He wants to use the existing shed's concrete pad for the replacement shed.

The survey disclosed that the existing concrete pad is not exactly parallel to the stream bank but, rather than removing a portion of the pad, Mr. Spurry is proposing to expand the pad along its existing lines to use as much of the existing pad as possible as a base for the proposed new shed. This will bring the new shed about five inches closer to the stream bank. However, most of the additional dimensions of the proposed new shed will be on the side away from the stream.

The Applicants considered other areas of the property for possible placement of the new shed and found that because of various other setbacks and restrictions the potential buildable area on the property is severely limited. That area is shown on the site plans as a dotted area and is only about 253 square feet.

The proposed placement of the new shed will permit the Applicants to use the existing driveway to access the shed. The shed will be a pole building.

Ms. Fink also explained that the Applicants will remove another existing, unpermitted structure from their property.

She explained the revised site plan and the revised letter from the Critical Area Commission. She said that the Commission sent the revised letter after she called and explained to Ms. Anderson, of the Commission, that the area of the property Ms. Anderson thought was available to the Applicants as an alternate site was not a buildable area.

Mr. Spurry testified in support of their application. He said much of the equipment that he currently stores outside of the building will be stored inside the new shed.

Mr. Rothwell explained that the proposed structure is a permitted accessory structure. He also said that when the lot was platted in 1989 the original setbacks were 50 feet all around the lot. He also said that the whole lot is considered to be within the Critical Area.

Mr. Spurry explained that the house and shed were actually moved to the property from another site in St. Michaels. The shed is 75 to 100 years old and is simply too small for his storage and work needs. He said he hated to destroy the old shed but he believes the proposed new structure would be much more attractive and more useful for his purposes.

Ms. Fink testified that the Applicants will have a plan to divert any runoff to the existing pond on the property. In addition, it will be better for the environment if Mr. Spurry's boat repair activities to be inside where potential pollutants can be trapped.

Mr. Rothwell explained that changes in State laws severely limited the building envelope available to the Applicants after they purchased their property.

Mr. Spurry said that he will remove one existing tree. Mr. Rothwell said that replacement plantings on the property will be addressed with a required mitigation plan.

No one appeared at the hearing in opposition to the application.

The Board then considered the application. After some discussion the Board, upon motion made by Mr. Sewell and seconded by Mr. Jones, approved the requested variance by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of the ordinance result in unwarranted hardship to the property owner. The available building envelope available to the property owners was severely limited by State law after they purchased their property. Both their existing residence and the existing 505 square foot shed are within the one or more of the required setbacks so imposed on the property.
3. A literal interpretation of the ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone. The property was

developed prior to the establishment of the Critical Area restrictions that have severely limited options for the Applicants. Even with the proposed new structure the Applicants development activities will only cover a small portion of their property.

4. The granting of the variances will not confer upon the property owner any special privilege that would be denied by the ordinance to other owners of lands or structures within the same zoning district. Given similar circumstances other property owners would likely have the same privilege.
5. The variance request is not based on conditions or circumstances which are the result of actions by the Applicants, including the commencement of development activity before an application for variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
6. The granting of the variances will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat, and the granting of the variance will be in harmony with the general spirit and intent of the state Critical Area Law and the Critical Area Program. The requested variances will have little, if any, adverse environmental impact.
7. The variances do not exceed the minimum adjustment necessary to relieve the unwarranted hardship.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicants, **GUY and MARY SPURRY** (Appeal No. 16-1646) is **GRANTED** the requested critical area variances consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. The Applicants shall make applications to and follow all of the rules procedures, and construction timelines as outlined by the Department of Permits and Inspections.
2. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.
3. Natural vegetation of any area three times the extent of the approved disturbance in the buffer (if any) shall be planted in the buffer or on the property if planting in the buffer cannot be reasonably accomplished. A Buffer Management Plan application may be obtained through the Department of Planning and Zoning.
4. The Applicants shall be required to remove the existing horse barn shown on the site plan within both the 100 foot Tributary Stream Buffer and within the Sewage Disposal Area.
5. The Applicants shall make sure that runoff from the new structure will be directed to the existing pond on the property.

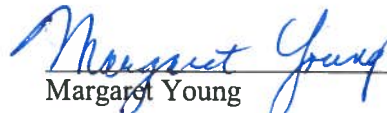
GIVEN OVER OUR HANDS, this May day of 27th, 2016.

TALBOT COUNTY BOARD OF APPEALS


Paul Shortall, Jr., Chairman


Phillip Jones, Vice Chairman


John Sewell


Margaret Young


Louis Dorsey, Jr.